

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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DARRYL JOHNSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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92-CR-0159-A

**ORDER**

Petitioner moves for a certificate of appealability from the Court's July 5, 2017 Decision and Order (Docket No. 1351), which denied as untimely Petitioner's Rule 60(b)(6) motion to reopen a 2001 decision dismissing Petitioner's § 2255 motion.

"When, as here, the district court denies relief on procedural grounds, the petitioner seeking a [certificate of appealability] must show both 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Petitioner has not shown that jurists of reason "would find it debatable whether" the Court was correct to deny his Rule 60(b)(6) motion as untimely. Petitioner's motion for a certificate of appealability (Docket No. 1352) is therefore denied.

**SO ORDERED.**

Dated: August 7, 2017  
Buffalo, New York

s/Richard J. Arcara  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE